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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 9

LUTHER H. REICHELDERFER, HERBERT B. CROSBY, and JOHN C. GOTWALS, Commissioners of the District of Columbia,
Petitioners,

vs.

HENRY I. QUINN, GEORGE J. MUELLER, JR., HENRY ORTH, JR., et al.

On Writ of Certiorari to the Court of Appeals of The District of Columbia

BRIEF FOR THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

There were two opinions rendered by the Court of Appeals, the first reported in 58 App. D. C. 339 and the second in 60 App. D. C. 325. (R. 16.)

JURISDICTION

The judgment of the Court of Appeals was entered on December 7, 1931. The petition for certiorari was filed on February 24, 1932, and was granted on April 11, 1932. Jurisdiction to issue the writ is conferred by Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question presented is whether Congress may establish a fire engine house in the District of Columbia on property owned by the United States and known as Rock Creek Park.

PROVISIONS OF CONSTITUTION AND OF STATUTES INVOLVED

Article 1, Section 8, Clause 17 of the United States Constitution provides:

> "The Congress shall have power—"
> "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States."

45 Stats. at Large, 667 provides:

"The Commissioners of the District of Co-

lumbia are hereby authorized and directed to sell the property at the corner of Sixteenth and Webster Streets, heretofore acquired for a fire engine house site at public or private sale at not less than the purchase price paid therefor by the District of Columbia and pay the proceeds thereof into the Treasury of the United States, to the credit of the District of Columbia; and the Commissioners are hereby authorized and directed to erect a fire engine house, with furniture and furnishings for a fire engine company, at the northwest corner of Sixteenth Street and Colorado Avenue, on property belonging to the United States, and there is hereby set aside for such purpose a plot of ground running north from the junction of Sixteenth Street and Colorado Avenue, as now publicly owned, one hundred (100) feet on Sixteenth Street, thence west at right angles to the street, one hundred and sixty feet (160), thence south at right angles to the line of Colorado Avenue. The balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch Road Northwest, is made available for the purpose aforesaid."

41 Statutes at Large 500.—the Act creating the Zoning Commission.
(Set out in full in appendix.)

26 Statutes at Large 492—the Act establishing Rock Creek Park.
(Set out in full in appendix.)

STATEMENT OF FACTS

Congress by its act of May 21, 1928 (45 Stats. at L. 667), directed the Commissioners of the District of Columbia to erect a fire engine house on the northwest corner of 16th Street and Colorado Avenue on property owned by the United States, and to sell certain property theretofore acquired for that purpose. The pertinent part of the said Act provides:

> "And the Commissioners are hereby authorized and *directed* to erect a fire engine house, with furniture and furnishings for a fire engine company, at the northwest corner of Sixteenth Street and Colorado Avenue, on property belonging to the United States, and there is hereby set aside for such purpose a plot of ground running north from the junction of Sixteenth Street and Colorado Avenue, as now publicly owned, one hundred (100) feet on Sixteenth Street, thence west at right angles to the street, one hundred and sixty feet (160), thence south at right angles to the line of Colorado Avenue. The balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch Road Northwest, is made available for the purpose aforesaid."

Prior to the commencement of the construction of the aforesaid fire engine house the respondents filed a bill in equity in the Supreme Court of the District of Columbia praying that the District

Commissioners be restrained from proceeding with the erection of the said fire engine house. (R. 1.) The bill of complaint alleges that respondents owned property used as a residence in the vicinity of 16th Street and Colorado Avenue, the proposed location of the fire engine house, and that their property was in a residential district as defined by the Zoning Regulations of the District of Columbia. The northwest corner of 16th Street and Colorado Avenue is a part of Rock Creek Park, which was established by Act of Congress of September 27, 1890, which Act provided that the said park be "perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park." The bill also alleges that the respondents established their homes relying upon the Zoning Laws and Regulations and the Act of Congress establishing Rock Creek Park.

The petitioners filed an answer (R. 8) substantially admitting the allegations of fact contained in the bill of complaint. A stipulation was entered into by counsel of record (R. 12) admitting that the respondents' predecessor in title was a party to the condemnation proceedings with respect to a tract of land owned by her, a portion of which was taken for the said Rock Creek Park, and without admitting the materiality of the averments, did not question that respondents relied upon the Zoning Laws and Regulations and the Rock Creek Park Act in establishing their homes;

and that the respondents would be subjected only to such noise as is incidental to the normal and usual conduct and operation of a fire engine house.

The court entered a final decree for a perpetual injunction restraining the Commissioners of the District of Columbia and their successors in office from erecting or causing to be erected a fire engine house at the northwest corner of 16th Street and Colorado Avenue. (R. 13.) The Court of Appeals sustained the action of the Supreme Court of the District of Columbia.

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals erred:

(1) In holding the District of Columbia Commissioners were not entitled to establish a fire engine house as directed by the Act of Congress.

(2) In permanently enjoining the District of Columbia Commissioners from erecting the fire engine house as directed by the mandate of Congress.

(3) In holding Congress was without power to change the use of any part of property owned by the United States.

SUMMARY OF ARGUMENT

Congress was authorized to establish a fire engine house as an agency of the police power.

The use of Rock Creek Park was not diverted.

The Zoning Regulations of the District of Columbia do not control.

Respondents' remedy, if any, was at law.

ARGUMENT

I.

Congress Was Authorized to Establish a Fire Engine House as an Agency of the Police Power.

Congress was given the power to exercise *exclusive* legislation in all cases whatsoever over the District of Columbia. Exercising this right Congress directed the Commissioners of the District of Columbia to establish a fire engine house at the intersection of two streets in the District of Columbia, to wit, 16th Street and Colorado Avenue. The Court of Appeals held that the Congress which was authorized by the Constitution to exercise exclusive legislation over the District of Columbia could not establish a fire engine house on property owned by the United States government.

The plenary power of Congress over the District of Columbia should not lightly be emasculated by the Courts. The wisdom and discretion of Congress in establishing the fire engine house on a small plot of ground located in Rock Creek Park contiguous to 16th Street, should not be subjected to review by the Courts of the District of

Columbia as the necessity for its establishment at the strategic point was a matter for the legislative and not the judicial branch of the Government. It may well be that the necessity for the location of the fire engine house at this point was to protect Rock Creek Park, which consists of over 1600 acres, particularly in view of the fire hazards which may exist in such a large tract of land, containing extensive wooded sections with the incidental brush, undergrowth and leaves. A fire commencing in any part of this large tract of land would naturally spread rapidly, not only endangering and destroying large portions of the Park but also subjecting adjacent private property to serious damage, if not total loss.

The Act of Congress authorizing the establishment of Rock Creek Park, in Section 7 thereof, placed the joint control of the Park in the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army. Said Section 7 further states:

> "* * * whose duty it shall also be to make and publish such regulations as they deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, animals, or curiosities within said park, and their retention in their natural condition, as nearly as possible."

This Court has frequently held that the police

power of the sovereign is not susceptible of definition, for, as was held in the case of Mugler *vs.* Kansas, 123 U. S. 623, it is a continuing one, and a vested right may in the future, because of a changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good. The Court, in speaking of its limitations, in the case of the District of Columbia *vs.* Brooke, 214 U. S. 138, said:

> "In the case at bar we are dealing with an exercise of the police power, one of the most essential powers, at times most insistent, and always one of the least limitable of the powers of government."

The police power may be retroactive in effect, and may work a severe hardship on individuals when properly invoked. One of the most striking illustrations of this is shown by the case of Hadacheck *vs.* Sebastian, 239 U. S. 394. The plaintiff owned a tract of land worth $800,000 for use in the manufacture of brick. He had been extracting clay and manufacturing brick on the premises for a number of years when a city ordinance prohibited the manufacture of brick within an area in which his land was situated. It was not profitable to remove the clay to another part of the city for the manufacture of brick and his land was reduced in value to $60,000. The Court at page 410, said:

"It is to be remembered that we are dealing with one of the most essential powers of government, one that is the least limitable. It may, indeed, seem harsh in its exercise, usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily. *A vested interest cannot be asserted against it because of conditions once obtaining. To so hold would preclude development and fix a city forever in its primitive conditions. There must be progress and if in its march private interests are in the way they must yield to the good of the community.*" (Italics ours.)

See also:

Legal Tender case, 12 Wall. (U. S.) 472.
Reinman vs. Littlerock, 237 U. S. 171.

The power of the several states on this question was determined in Atlantic Coast Line *vs.* Goldsboro, 232 U. S. 548. The Court said:

"For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; *and that all contract and property rights are held subject to its fair exercise.* Slaughter-House Cases, 16 Wall. 36, 62; Munn *v.* Illinois, 94 U. S. 113,

125; Beer Co. *v.* Massachusetts, 97 U. S. 25, 33; Mugler *v.* Kansas, 123 U. S. 623, 665; Crowley *v.* Christensen, 137 U. S. 86, 89; New York & R. R. Co. *v.* Bristol, 151 U. S. 556, 567; Texas &c, R. R. Co. *v.* Miller, 221 U. S. 408, 414, 415. And the enforcement of uncompensated obedience to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law. Chicago, Burlington &c, R. *v.* Chicago, 166 U. S. 226, 255; New Orleans Gas Co. *v.* Commissioners, 197 U. S. 453, 462; C. B. & Q. Ry. *v.* Commissioners, 200 U. S. 561."

The same doctrine is enunciated in Chicago & Alton R. R. *vs.* Tranbarger, 238 U. S. 67.

If the foregoing can be said of the police power of a State, certainly there can be no question as to the exclusive jurisdiction of Congress to legislate over the District of Columbia, especially in the interest of fire protection for the safety and welfare of the public.

There is a presumption of validity in the enactment of the law by legislature. The good faith of Congress or the Commissioners has not been questioned. Thus in Munn *vs.* Illinois, 94 U. S. 113, at page 132, the Court said:

"For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of pro-

priety, not of expediency. If no state of facts could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the State. But if it could we must presume it did. *Of the propriety of legislative interference, within the scope of legislative power, the legislature is the exclusive judge.*"

Later (1909), in the case of Home Telephone Co. *vs.* Los Angeles, 211 U. S. 265, the Court said:

> "It is a well settled rule of constitutional exposition that if a statute may or may not be, according to the circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed."

See also:

> Sullivan *vs.* City of Shreveport, (1919), 251 U. S. 171.

In the case of L'Hote *vs.* New Orleans, 177 U. S. 587, the City of New Orleans fixed a certain area as the "Red Light District" and prohibited any prostitute dwelling elsewhere in the city. Thereafter, the city changed the boundaries of the district, excluding a part of the former district and including additional territory in another direction. Within the newly defined limits were located a reputable hotel, a residence, a church and a Sunday school house, owned by petitioners who alleged that their property was greatly depre-

ciated or rendered wholly useless for the purposes for which it was built. The Court, in its opinion, (page 597) adopts the following from 1 Dillon Mun. Corp. 4th ed., Sec. 141:

> "Laws and ordinances relating to the comfort, health, convenience, good order, and general welfare of the inhabitants are comprehensively styled 'Police Laws or Regulations.' It is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury it is either *damnum asbque injuria*, or, in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure."

The United States possesses full and unlimited jurisdiction both of a political and municipal nature over the District of Columbia. Shoemaker *vs.* U. S., 147 U. S. 300.

> "The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the national government, has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the district all legislative powers that the legislature of

> a state might exercise within the state; and may vest and distribute the judicial authority in and among the courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States."

In legislating for the District of Columbia, Congress remains the legislature of the Union, and its acts are the acts of the United States. There is no division here between powers of state government and powers of general government; all these powers are alike vested in the federal government. Washington Aqueduct (1855) 7 Op. Atty. Gen. 115.

The supreme legislative body of the District of Columbia is Congress. The subordinate legislative powers of a municipal character which may be lodged in the city corporations or in the district corporation, do not make these bodies sovereign. Metropolitan R. Co. *vs.* D. C. 132 U. S. 9.

In Nectow *vs.* Cambridge, 277 U. S. 183, the Court said:

> "We quite agree with the opinion expressed below that a court should not set aside the determination of public officers in such a matter unless it is clear that their action 'has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the pub-

lic morals, the public safety or the public welfare in its proper sense.' "

A case directly in point is that of Cincinnati *vs.* Wegehoft, 119 Ohio 136; 162 N. E. 389 (June, 1928), wherein the Court of Appeals of Ohio held that the city of Cincinnati was well within its power in establishing a fire engine house at a particular point despite the provisions of the zoning regulations or the injury to private property. The decision of the six justices was unanimous in holding that the construction and operation of a fire engine house was not a nuisance, and said:

"* * * The right, and the duty as well, to exercise good faith in the furtherance of good municipal government, cannot be enjoined by the Courts because there exists a possibility that such power may be abused by the duly elected or appointed representatives of the city. * * *

"The charge is that it is not necessary for the city to operate the engine house at the particular point chosen by the city and it is averred that it would serve equally well the purposes of the city if it were located at any one of the several places designated by the defendant in error, and that, if so located it would do less damage to the property of the defendant in error, which is only another way of saying that the Court should substitute its judgment for that of the chosen representatives of the city in the matter of locating the city's municipal buildings."

Nowhere is it alleged in the bill of complaint or the stipulation that public property embraced within Rock Creek Park or private property adjacent thereto has adequate fire protection.

The Court of Appeals, in its first decision, 58 App. D. C. 339, at page 340, said:

> "We deem it of no importance whether or not the mere location and erection of a fire engine house is, strictly speaking, the exercise of police power. While it furnishes headquarters and housing for the men and equipment used in the public fire service, to protect the safety and property of the public at large, it is not such an agency that the protection and safety afforded is dependent upon its location at any particular given point."

There is no allegation in the bill of complaint or anywhere in the record that the protection and safety afforded by the existence of a fire engine house is not dependent upon its location at any particular given point. Does not common experience, as well as common sense, tell us that fire protection is only adequate when fire apparatus properly equipped and manned can, within a few minutes, be at the place where a fire has started? Time is of the essence—a distance of three city blocks or a delay of three minutes may result in many thousand dollars of damage, as well as personal injury or death. Where is there any basis for the assumption by the Court of Appeals that the engine house in question could be located out-

side of the particular residential district and furnish the same public protection?

The Court of Appeals also stated at page 340:

> "* * * It appears in this case that the engine house could have been established at a more strategic point two blocks distant from the present site, where it would have been outside of a residential district and with little or no property damage to any one."

It is submitted that nowhere does the record justify such a statement. As a matter of fact, it appears from the record in this case that the property of the respondent Quinn is located at 1507 Gallatin Street, which is substantially as near 14th Street as it is near 16th Street. The main point, however, is that it is for Congress to say where it desires to locate a fire engine house without the supervision or review from the Courts. Certainly Congress through its committees is better able and better equipped to properly judge how the lives and property of the citizens of the District of Columbia should be protected.

II.

The Use of Rock Creek Park Was Not Diverted.

The Court of Appeals in its first opinion, 58 App. D. C. 339, devotes a large space to the discussion of the alleged diversion of Rock Creek Park for a different use than that originally con-

templated. It is submitted the establishment of a fire engine house on the park property and occupying a lot 100 feet by 160 feet at the intersection of two streets is not a diversion of a public park consisting of over 1600 acres, particularly where the engine house is to be located at the intersection of two public streets. Instead of a diversion or change of use of Rock Creek Park, Congress was enacting legislation to protect and safeguard the park in order that it could be used and enjoyed by the entire public.

The Court of Appeals quoted from and placed great reliance upon the case of Douglas *vs.* Montgomery, 118 Ala. 599. That case, however, is not in point because it appears from the decision that a public park was completely and entirely turned over to a railroad company by the city council. There is no analogy in the Douglas case, supra, to the one at bar when we consider that the fire engine house was to occupy a lot 100 feet by 160 feet in a park of land comprised of over 1600 acres.

The case of Cincinnati *vs.* White, 6 Pet. 438, 8 L. Ed. 452, cited by the Court of Appeals in its opinion, likewise is not in point for it appears from a careful examination of the case that the original owners of property had dedicated a portion of the same adjacent to the water front of the city of Cincinnati, as a common for the use and benefit of the town forever. Subsequently the legal title to the land became vested in the plaintiff who sought to recover the land so dedicated for public use. There again the use of the entire prop-

erty was attempted to be diverted. The Court held there was an estoppel in pais which precluded plaintiff from recovering the land so dedicated. The United States owns Rock Creek Park by virtue of the action of Congress, yet the Court held that Congress was powerless to direct the Municipal authorities to establish a fire engine house in the said park.

Nowhere in the bill of complaint or the stipulation is it stated that the proposed fire engine house obstructs, obscures or interferes with the view of the park from any of the homes of the respondents, nor is it even stated in the bill of complaint or the stipulation that any one of the respondents' homes is so located that it has an unobstructed view of the park, and that the placement of the fire engine house would disturb or obstruct such view.

There is no allegation or proof that the placement of a fire engine house at the point designated would impede the use of any of the respondents to Rock Creek Park.

III.

The Zoning Regulations of the District of Columbia Do Not Control.

There is no allegation in the bill of complaint that the proposed site of the fire engine house is located in a residential use district. The respondents were careful to state that their property was located in a residential use district but did not say directly or indirectly that the corner of 16th

Street and Colorado Avenue, composing a part of Rock Creek Park, was in a residential use district.

The contention that respondents' property was located in a residential zone is not sufficient to prevent the establishment of a fire engine house and this is principally true because a residential zone may be of such a large size that the public safety and protection of both public and private property may necessitate and warrant the establishment of a fire engine house within the area.

The Zoning Regulations were made pursuant to the authority of Congress. Congress if it so desires can change or alter zoning laws or regulations. Any subsequent enactment carrying out this policy, it is submitted, is a valid exercise of the inherent power of Congress to legislate for the District of Columbia.

IV.

Respondents' Remedy, If Any, Was At Law.

The claim of respondents that their only remedy was by the issuance of an injunction is untenable. It is submitted that they have no remedy at all because the Act of Congress was lawful and there was no legal damage resulting from the establishment of the fire engine house as contemplated. If, however, the Court should come to the conclusion that by reason of the condemnation proceedings which were instituted at the time of the establishment of Rock Creek Park (1890) the respondents,

the present owners, are entitled to compensation, then their remedy is not by an injunction in an equity court, but is one at law. This Court in Hurley, Secretary of War, *vs.* Kincaid, 285 U. S. 95, decided February 23, 1932, dismissed a bill for an injunction brought by Kincaid against the Secretary of War and others for an alleged taking of land and held that Kincaid's remedy, if any, was at law.

It is well to note here that the Court of Appeals in its opinion states that the respondents were entitled to "an unobstructed view into the park." The record distinctly fails to disclose that any of the respondents had an unobstructed view into the Park, or any view whatever of the Park. In fact the contrary may be definitely inferred from the addresses given of the various respondents, which indicate that several of them are substantially one city block or more from the entrance of the Park.

Courts will not inquire into the motives which induce members of Congress to enact certain legislation. Arizona *vs.* California, 283 U. S. 455.

Injunctions cannot be maintained to prevent assumed potential invasions. Arizona *vs.* California, 283 U. S. 455.

CONCLUSION

It is submitted that the decision of the Court of Appeals of the District of Columbia should be reversed.

Respectfully submitted:

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Principal Assistant Corporation Counsel, D. C.
ROBERT E. LYNCH,
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September 1932.

ZONING ACT.

(Act of March 1, 1920, 41 Stat. 500.)

An act to regulate the height, area, and use of buildings in the District of Columbia and to create a Zoning Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to protect the public health, secure the public safety and to protect property in the District of Columbia there is hereby created a Zoning Commission, which shall consist of the Commissioners of the District of Columbia, the officer in charge of public buildings and grounds of the District of Columbia, and the Superintendent of the United States Capitol Building and Grounds, which said commission shall have all the powers and perform all the duties hereinafter specified and shall serve without additional compensation. Such employees of the government of the District of Columbia as may be necessary to carry out the purposes of this act shall be assigned to such duty by the Commissioners of the District of Columbia without additional compensation.

There is hereby authorized for the expenses of said commission, including the employment of expert services and all incidental and contingent expenses, a sum not to exceed $5,000, payable one-half out of any money in the United States Treasury not otherwise appropriated and the other half out of the revenues of the District of Columbia.

SEC. 2. That within six months after the passage of this act and after public notice and hearing as hereinafter provided, the said commission shall divide the District of Columbia into certain districts, to be known, respectively, as height,

area, and use districts, and shall adopt regulations specifying the height and area of buildings thereafter to be erected or altered therein, and the purposes for which buildings and premises therein may be used: *Provided*, That such regulations may differ in the various districts: *Provided further*, That the permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of that district by the act of Congress approved June 1, 1910, and amendments thereto, regulating the height of buildings in the District of Columbia: *And provided further*, That no such districts shall be established, nor shall any regulations therefor be adopted, nor shall the height, area, or use of buildings to be erected therein be prescribed until said commission has afforded persons interested an opportunity to be heard at a public hearing as hereinafter provided: *And provided further*, That in residence districts the usual accessories of a residence located on the same lot including the office of a physician, dentist, or other person, and including a private garage containing space for not more than four automobiles, shall not be prohibited.

SEC. 3. That wherever, under the provision of this act, it is required that a public hearing shall be held, notice of the time and place of such hearing shall be published for not less than ten consecutive days in one or more newspapers of general circulation printed and published in the District of Columbia; and such public hearing may be adjourned from time to time: *Provided*, That if the time and place of the adjourned meeting is publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published.

SEC. 4. That after the public hearing herein provided for shall have been concluded, said commission shall definitely determine the number and boundaries of the district which it is hereby authorized and directed to establish, and shall specify the height and area of the buildings which may thereafter be erected therein, and shall prescribe the purposes for which such buildings thereafter erected may or may not be used. Said districts so established shall not be changed except on order of said commission after public hearing. Said commission may initiate any changes, or they may be initiated upon the petition of the owners affected. Where the proposed change is to add a contiguous area to a use, height, or area district, the owners of at least 50 per centum of the street frontage proposed to be changed must join in the petition: *Provided*, That if the frontage proposed to be changed is not a contiguous area, the owners of at least 50 per centum of a frontage within the area not less than three blocks in length must join in such petition before it may be considered by said commission. No such change shall be made, either by said commission on its own motion or upon such petition, except with the unanimous vote of said commission, if the owners of at least 20 per centum of the frontage proposed to be changed protest against such change.

SEC. 5. That said commission is authorized and empowered to make such orders and adopt such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of this act: *Provided*, That no order or regulation so adopted shall require any change in the plans, construction or designated use of (a) a building for which a permit shall have been issued, or plans for which shall be on file with the inspector of buildings of the

District of Columbia at the time the orders or regulations authorized under this act are promulgated; or (b) a permit for the erection of which shall be issued within thirty days after promulgation of the orders or regulations authorized or adopted under this act and the construction of which in either of the above cases shall have been diligently prosecuted within a year from the date of such permit and the ground story framework of which, including the second tier of beams, shall have been completed within said year, and which entire building shall be completed according to such plans within two years of the date of the promulgation of such orders or regulations; or (c) prevent the restoration of a building partially destroyed by fire, explosion, act of God or the public enemy or prevent the continuance of the use of such building or part thereof as such use existed at the time of such partial destruction, or prevent a change of such existing use except under limitations provided herein in relation to existing buildings and premises: *Provided further*, That no frame building that has been damaged by fire or otherwise more than one-half of its original value shall be restored within the fire limits as provided by the building regulations of the District of Columbia; or (d) prevent the restoration of a wall declared unsafe by the inspector of buildings of the District or by a board of survey appointed in accordance with an existing law or regulation.

SEC. 6. That any lawful use of a building or premises existing at the time of the adoption of orders and regulations made under the authority of this act may be continued, although such use does not conform with the provisions hereof or with the provisions of such orders and regulations; and such use may be extended throughout the building, provided no structural alterations,

except those required by law or regulation, is made therein and no new building is erected. Where the boundary line of any use district divides a lot in a single ownership at the time of the adoption of orders and regulations under the authority of this act, the commission may permit a use authorized on either portion of such lot to extend to the entire lot, but not more than twenty-five feet beyond the boundary line of the use district.

SEC. 7. The maps of the districts established by said commission and copies of all orders and regulations as to the height and area of buildings to be erected therein and as to the uses to which such buildings may be lawfully devoted, and copies of all other official orders and regulations of the commission shall be filed in the office of the Engineer Commissioner of the District of Columbia. Copies of all orders and regulations shall be published in one or more newspapers printed in the District of Columbia for the information of all concerned.

SEC. 8. That it shall be unlawful to use or permit the use of any building or premises or part thereof hereafter created, erected, changed, or converted wholly or partly in its use or structure until a certificate of occupancy shall have been issued by authority of said zoning commission.

SEC. 9. That buildings erected, altered, or raised, or converted in violation of any of the provisions of this act or the orders and regulations made under the authority thereof are hereby declared to be common nuisances; and the owner or person in charge of or maintaining any such buildings, upon conviction on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nui-

sance, and shall be punished by a fine of not more than $100 per day for each and every day such nuisance shall be permitted to continue and shall be required by said court to abate such nuisance. The corporation counsel of the District of Columbia may maintain an action in the Supreme Court of the District of Columbia in the name of the District of Columbia to abate and perpetually enjoin such nuisance.

SEC. 10. That the Commissioners of the District of Columbia shall enforce the provisions of this act and the orders and regulations adopted by said Zoning Commission under the authority thereof, and nothing herein contained shall be construed to limit the authority of the Commissioners of the District of Columbia to make municipal regulations as heretofore: *Provided*, That such regulations are not inconsistent with the provisions of this law and the orders and regulations made thereunder. In interpreting and applying the provisions of this act and of the orders and regulations made thereunder they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience, and general welfare. This act shall not abrogate or annul any easements, covenants, or other agreements between parties: *Provided, however*, That as to all future building construction or use of premises where this act or any orders or regulations adopted under the authority thereof impose a greater restriction upon the use of buildings or premises or upon height of building, or require larger open spaces than are imposed or required by existing law, regulations, or permits, or by such easements, covenants, or agreements, the provisions of this act and of the orders and regulations made thereunder shall control.

SEC. 11. That all laws, or parts of laws and regulations in conflict with the provisions of this act are hereby repealed.

Approved March 1, 1920.

[PUBLIC—No. 297.]

An act authorizing the establishing of a public park in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a tract of land lying on both sides of Rock Creek, beginning at Klingle Ford Bridge, and running northwardly, following the course of said creek, of a width not less at any point than six hundred feet, nor more than twelve hundred feet, including the bed of the creek, of which not less than two hundred feet shall be on either side of said creek, south of Broad Branch road and Blagden Mill road and of such greater width north of said roads as the commissioners designated in this act may select, shall be secured, as hereinafter set out, and be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park: *Provided, however,* That the whole tract so to be selected and condemned under the provisions of this act shall not exceed two thousand acres nor the total cost thereof exceed the amount of money herein appropriated.

SEC. 2. That the Chief of Engineers of the United States Army, the Engineer Commissioner of the District of Columbia, and three citizens to be appointed by the President, by and with the advice and consent of the Senate, be, and they are hereby, created a commission to select the land for said park, of the quantity and within the limits

aforesaid, and to have the same surveyed by the assistant to the said Engineer Commissioner of the District of Columbia in charge of public highways, which said assistant shall also act as executive officer to the said commission.

SEC. 3. That the said commission shall cause to be made an accurate map of said Rock Creek Park, showing the location, quantity, and character of each parcel of private property to be taken for such purpose, with the names of the respective owners inscribed thereon, which map shall be filed and recorded in the public records of the District of Columbia, and from and after the date of filing said map the several tracts and parcels of land embraced in said Rock Creek Park shall be held as condemned for public uses, and the title thereof vested in the United States, subject to the payment of just compensation, to be determined by said commission, and approved by the President of the United States: *Provided*, That such compensation be accepted by the owner or owners of the several parcels of land.

That if the said commission shall be unable by agreement with the respective owners to purchase all of the land so selected and condemned within thirty days after such condemnation, at the price approved by the President of the United States, it shall, at the expiration of such period of thirty days, make application to the supreme court of the District of Columbia, by petition, at a general or special term, for an assessment of the value of such land as it has been unable to purchase.

Said petition shall contain a particular description of the property selected and condemned, with the name of the owner or owners thereof, if known, and their residences, as far as the same may be ascertained, together with a copy of the recorded map of the park; and the said court is

hereby authorized and required, upon such application, without delay, to notify the owners and occupants of the land, if known, by personal service, and if unknown, by service by publication, and to ascertain and assess the value of the land so selected and condemned, by appointing three competent and disinterested commissioners to appraise the value or values thereof, and to return the appraisement to the court; and when the value or values of such land are thus ascertained, and the President of the United States shall decide the same to be reasonable, said value or values shall be paid to the owner or owners, and the United States shall be deemed to have a valid title to said land; and if in any case the owner or owners of any portion of said land shall refuse or neglect, after the appraisement of the cash value of said lands and improvements, to demand or receive the same from said court, upon depositing the appraised value in said court to the credit of such owner or owners, respectively, the fee-simple shall in like manner be vested in the United States.

SEC. 4. That said court may direct the time and manner in which possession of the property condemned shall be taken or delivered, and may, if necessary, enforce any order or issue any process for giving possession.

SEC. 5. That no delay in making an assessment of compensation, or in taking possession, shall be occasioned by any doubt which may arise as to the ownership of the property, or any part thereof, or as to the interests of the respective owners. In such cases the court shall require a deposit of the money allowed as compensation for the whole property or the part in dispute. In all cases as soon as the said commission shall have paid the compensation assessed, or secured its payment by a deposit of money under the order of the court,

possession of the property may be taken. All proceedings hereunder shall be in the name of the United States of America and managed by the commission.

SEC. 6. That the commission having ascertained the cost of the land, including expenses, shall assess such proportion of such cost and expenses upon the lands, lots, and blocks situated in the District of Columbia specially benefited by reason of the location and improvement of said park, as nearly as may be, in proportion to the benefits resulting to such real estate.

If said commission shall find that the real estate in said District directly benefited by reason of the location of the park is not benefited to the full extent of the estimated cost and expenses, then they shall assess each tract or parcel of land specially benefited to the extent of such benefits as they shall deem the said real estate specially benefited. The commission shall give at least ten days' notice, in one daily newspaper published in the city of Washington, of the time and place of their meeting for the purpose of making such assessment and may adjourn from time to time till the same be completed. In making the assessment the real estate benefited shall be assessed by the description as appears of record in the District on the day of the first meeting; but no error in description shall vitiate the assessment: *Provided*, That the premises are described with substantial accuracy. The commission shall estimate the value of the different parcels of real estate benefited as aforesaid and the amount assessed against each tract or parcel, and enter all in an assessment book. All persons interested may appear and be heard. When the assessment shall be completed it shall be signed by the commission, or a majority (which majority shall have power always to act),

and be filed in the office of the clerk of the supreme court of the District of Columbia. The commission shall apply to the court for a confirmation of said assessment, giving at least ten days' notice of the time thereof by publication in one daily newspaper published in the city of Washington, which notice shall state in general terms the subject and the object of the application.

The said court shall have power, after said notice shall have been duly given, to hear and determine all matters connected with said assessment; and may revise, correct, amend, and confirm said assessment, in whole or in part, or order a new assessment, in whole or in part, with or without further notice or on such notice as it shall prescribe; but no order for a new assessment in part, or any partial adverse action, shall hinder or delay confirmation of the residue, or collection of the assessment thereon. Confirmation of any part of the assessment shall make the same a lien on the real estate assessed.

The assessment, when confirmed, shall be divided into four equal installments, and may be paid by any party interested in full or in one, two, three, and four years, on or before which times all shall be payable, with six per centum annual interest on all deferred payments. All payments shall be made to the Treasurer of the United States, who shall keep the account as a separate fund. The orders of the court shall be conclusive evidence of the regularity of all previous proceedings necessary to the validity thereof, and of all matters recited in said orders. The clerk of said court shall keep a record of all proceedings in regard to said assessment and confirmation. The commission shall furnish the said clerk with a duplicate of its assessment book, and in both shall be entered any change made or ordered by the

court as to any real estate. Such book filed with the clerk when completed and certified shall be prima facie evidence of all facts recited therein. In case assessments are not paid as aforesaid the book of assessments certified by the clerk of the court shall be delivered to the officer charged by law with the duty of collecting delinquent taxes in the District of Columbia, who shall proceed to collect the same as delinquent real estate taxes are collected. No sale for any installment of assessment shall discharge the real estate from any subsequent installment; and proceedings for subsequent installments shall be as if no default had been made in prior ones.

All money so collected may be paid by the Treasurer on the order of the commission to any persons entitled thereto as compensation for land or services. Such order on the Treasurer shall be signed by a majority of the commission and shall specify fully the purpose for which it is drawn. If the proceeds of assessment exceed the cost of the park the excess shall be used in its improvement, under the direction of the officers named in section eight, if such excess shall not exceed the amount of ten thousand dollars. If it shall exceed that amount that part above ten thousand dollars shall be refunded ratably. Public officers performing any duty hereunder shall be allowed such fees and compensation as they would be entitled to in like cases of collecting taxes. The civilian members of the commission shall be allowed ten dollars per day each for each day of actual service. Deeds made to purchasers at sales for delinquent assessments hereunder shall be prima facie evidence of the right of the purchaser, and any one claiming under him, that the real estate was subject to assessment and directly benefited, and that the assessment was regularly made; that the assess-

ment was not paid; that due advertisement had been made; that the grantee in the deed was the purchaser or assignee of the purchaser, and that the sale was conducted legally.

Any judgment for the sale of any real estate for unpaid assessments shall be conclusive evidence of its regularity and validity in all collateral proceedings except when the assessment was actually paid, and the judgment shall estop all persons from raising any objection thereto, or to any sale or deed based thereon, which existed at the date of its rendition, and could have been presented as a defense to the application for such judgment.

To pay the expenses of inquiry, survey, assessment, cost of lands taken, and all other necessary expenses incidental thereto, the sum of one million two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided*, That one-half of said sum of one million two hundred thousand dollars, or so much thereof as may be expended, shall be reimbursed to the Treasury of the United States out of the revenues of the District of Columbia, in four equal annual installments, with interest at the rate of three per centum per annum upon the deferred payments: *And provided further*, That one-half of the sum which shall be annually appropriated and expended for the maintenance and improvement of said lands as a public park shall be charged against and paid out of the revenues of the District of Columbia, in the manner now provided by law in respect to other appropriations for the District of Columbia, and the other half shall be appropriated out of the Treasury of the United States.

SEC. 7. That the public park authorized and established by this act shall be under the joint con-

trol of the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army, whose duty it shall be, as soon as practicable, to lay out and prepare roadways and bridle paths, to be used for driving and for horseback riding, respectively, and footways for pedestrians; and whose duty it shall also be to make and publish such regulations as they deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, animals, or curiosities within said park, and their retention in their natural condition, as nearly as possible.

Approved, September 27, 1890.